

**REMARKS/ARGUMENTS**

The present paper is in response to the Office Action dated October 9, 2007.

Claims 1-4, 6-8, 10-25 were pending of which claims 1, 6, 13, 18, and 23 were independent claims. The Applicant amends claims 1, 6, 11 and 23, and cancels claims 3, 10, and 13-17. The amended claims introduce no new matter and are fully supported by the specification. The Applicant respectfully submits that the pending claims 1-2, 6-8, 11-12, and 18-25 are in condition for allowance in view of the amendments and following supporting remarks.

**Claim Rejections Under § 103:**

Paragraph 3 of the Office Action rejects claim 1 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Irvin (U.S. 6,021,317) in view of Gray (U.S. Pat. 6,862,618). Applicant respectfully traverses the rejection because Irvin in view of Gray fails to make out a *prima facie* case of obviousness.

In order to allege a claim is obvious when references are combined under 35 U.S.C. §103(a) the combination must teach each and every limitation of the claim. In this case, the rejection must fail because Irvin and Gary alone or in combination, fail to teach each and every element of the claims as amended.

The Action indicates that claim 3 would be allowable if rewritten in independent form. Claim 1 has been amended to include all of the limitations of cancelled claim 3. Accordingly, Applicant asserts that claim 1 is allowable over the art of record and respectfully requests withdrawal of the rejection.

Paragraph 4 of the Office Action rejects claims 2 and 4 as allegedly being unpatentable over Irvin in view of Gray in further view of Ogino (U.S. Pat. 7,043,218)

Claims 2 and 4 depend from claim 1 and are therefore also allowable for at least the same reasons as discussed with respect to claim 1. Applicant therefore, respectfully requests withdrawal of the rejection of claims 2 and 4.

Paragraph 5 of the Office Action rejects claims 6-8, 12-17, and 23-25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Irvin in view of Bruckert (U.S. Patent 6,018,651) in further view of Gray. With respect to claims 13-17, Applicant respectfully traverses the rejection because Applicant has cancelled these claims thereby rendering the rejection moot. Applicant therefore respectfully requests withdrawal of the rejection; however, Applicant expressly reserves the right to pursue any patentable material included in cancelled claims 13-17 via a continuation application.

With respect to claim 6, the Action indicates that claim 10 would be allowable if rewritten in independent form. Claim 6 has been amended to include all of the limitations of cancelled claim 10. Accordingly, Applicant asserts that claim 6 is allowable over the art of record and respectfully requests withdrawal of the rejection. Claims 7, 8, and 12 depend from claim 6 and are therefore allowable for the same reason claim 6 is allowable. Applicant therefore respectfully requests withdrawal of the rejection of claims 6-8 and 12.

With respect to claim 23, Applicant respectfully traverses the rejection because Irvin, Bruckert, and Gray, alone or in combination fail to teach all of the limitations of amended claim 23. Claim 23 has been amended to indicate that the amplification of the amplifier associated with the antenna being used is slowly increased, while the amplification of the amplifier associated with the antenna not being used, or being

switched away from is slowly decreased. Thus, amended claim 23 is allowable for much the same reason that claim 6 is allowable. Claims 24 and 25 ultimately depend from claim 23 and are therefore allowable for the same reason as claim 23. Applicant therefore respectfully request withdrawal of the rejection of claims 23-25.

Paragraph 5 of the Action rejects claims 18 and 20-22 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Irvin in view of Bruckert. Applicant respectfully traverses this rejection because neither Irvin nor Bruckert, alone or in combination, teach each and every element of the claims.

Claim 18 requires "a processor configured to receive a signal from the node and present control signals to the first amplifier and the second amplifier, wherein said control signals selectively **and slowly enables or disables** the first amplifier and the second amplifier (emphasis added)." Accordingly, claim 18 is allowable over the art of record unless Bruckert makes up for the deficiencies of Irvin, which it does not. Moreover, Irvin and Bruckert, alone or in combination, fail to teach or suggest "means for processing configured to analyze the first signal and the second signal and, responsive to the analyzing, generate a control signal when an error rate associated with the first signal or the second signal exceeds a threshold value **for a set period of time**". A prior Action in fact admits that Irvin and Bruckert, in combination, fail to teach a generated response when an error rate associated with the first or second signal exceeds a threshold value for a set period of time (See June 7 Office Action, page 10).

Claims 20-22 ultimately depend from claim 18 are therefore allowable for the same reasons as claim 18. Applicant, therefore, respectfully requests withdrawal of the rejection of claims 18 and 20-22.

Paragraph 6 of the Office Action rejects claim 19 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Irvin in view of Bruckert in further view of Bell (U.S. Pat. 5,189,434). Claim 19 depends from claim 18 and is therefore allowable for the same reasons unless Bell makes up for the deficiencies of Irvin and Bruckert, which it does not. Applicant therefore respectfully requests withdrawal of the rejection.

**Allowable Subject Matter:**

Paragraph 7 of the Office Action objects to claims 3 and 10-11 for being dependent on a rejected base claim. Claim 3 has been cancelled and as indicated above, claim 1 has been amended to include all of the limitations of cancelled claim 3. Thus, claim 1 is the equivalent of claim 3 rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Accordingly, Applicant believes that claim 3 is in condition for allowance and respectfully requests withdrawal of the objection.

Similarly, claim 10 has been cancelled and as indicated above, claim 6 has been amended to include all of the limitations of cancelled claim 10. Thus, claim 6 is the equivalent of claim 10 rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Accordingly, Applicant believes that claim 6 is in condition for allowance and respectfully requests withdrawal of the objection.

Claim 11 has been amended to depend from amended claim 6. Accordingly, Applicant asserts that claim 11 now depends from an allowable base claim and respectfully requests withdrawal of the objection as to claim 11.

### **CONCLUSION**

Based on the above amendments and remarks, Applicant believes that the claims are in condition for allowance and such is respectfully requested. Applicant believes that no additional fees are necessitated by this response. The Commissioner is hereby authorized to charge any additional fees required by this response to our Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted;

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